

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 29, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on July 29, 2011. Members present were Chairman Louis Stout, Barry Stumbo, Janice Meyer, Noel White, James Griggs and Thomas Glover. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Bill Saltee, Jim Marx and Wanda Howard.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the October 29, 2010; February 25, 2011; April 29, 2011; May 20, 2011; and the June 24, 2011 meetings would be considered at this time. Since there were no revisions, corrections or questions, the Chairman asked for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously to approve the minutes of the meetings held on October 29, 2010; February 25, 2011; April 29, 2011; May 20, 2011; and June 24, 2011.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 - a. **V-2011-27: JOHNNY TEMPLE** - appeals for a variance to increase the allowable square footage and height for three directional signs, as well as allow a greater amount of text for the signs in a Professional Office (P-1) zone, on property located at 101 Yorkshire Boulevard. (Council District 7)

The Staff Recommends: Postponement, for the following reasons:

1. Two aspects of this application, relating to size and content limitations of the requested directional signs, cannot be addressed by the Board as a variance. Any relief to those restrictions of the Zoning Ordinance should be addressed as an administrative appeal, which will require that the current application be amended.
2. Additional information is needed regarding the feasibility of transferring unused sign square footage to the oversized signs that are proposed. Assembling that information will require that the appellant consult with the Division of Building Inspection to quantify sign square footage that will not be used at this location and is potentially available for transfer to an alternative sign type and location.
3. The requested height of the directional signs, which can be addressed by the Board as a variance, is directly related to the size issue, so the two issues should be considered by the Board at the same time. Also, additional time will provide an opportunity for the appellant to assemble more detailed justification for the requested sign heights, which will be an important consideration since two of the three directional signs at issue are to be taller than the existing directional signs that have been serving this property.

Mr. Marx stated that he had received an e-mail request from the applicant for an additional postponement, in order to modify their application to include an administrative appeal; and that a two-month postponement would be necessary since the filing deadline for next month's BOA

meeting has passed.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously to postpone **V-2011-27: JOHNNY TEMPLE** until the September 30 meeting.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2011-48: LEX PROPERTIES** - appeals for a variance to reduce the required yard along Shenandoah Drive from 30' to 16'3", for construction of an attached garage in a Single-Family Residential (R-1C) zone, on property located at 1015 Della Drive. (Council District 11)

The Staff Recommends: Approval of a variance along Shenandoah Drive from 30' to 18', for the following reasons:

1. Granting such a variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity, as the garage addition will generally align with an existing residence constructed many years ago. Also, sufficient space will be available in the driveway for temporary parking of vehicles without blocking the public sidewalk.
2. The platted building line of 15' along Shenandoah Drive, and the alignment of the existing residence just behind that building line, are special circumstances that contribute to justifying a reduction of the normally required 30' side street side yard at this location.
3. Strict application of the Zoning Ordinance would force the appellant to construct a new garage in the middle of the back yard open space that benefits the residence, which is not only undesirable, but also out of character with the neighborhood.
4. The appellant is making a reasonable effort to improve this property in a manner that is consistent with how the subdivision was platted many years ago.

This recommendation of approval is made subject to the following conditions:

1. The garage shall be constructed in accordance with a revised site plan indicating a minimum setback of 18' to be provided along Shenandoah Drive.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The driveway serving the garage shall have a maximum width of 20'.
4. A minimum of four small to medium-sized trees shall be planted along Shenandoah Drive, two to the north of the garage and two to the south of the garage, in accordance with a landscaping plan submitted to, and approved by, the Division of Building Inspection.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Mr. Steve Perry, the owner of Lexington Properties, was present. He indicated being in general agreement with the conditions for approval, with the exception of the number of tree plantings recommended in Condition #4. Referring to the site plan, he explained that there is an electric easement for the overhead lines at the back of the property; and that if the two trees to the north of the proposed garage are planted as recommended, he feared that one of them may eventually have to be cut down in the event of severe weather, such as an ice storm. Instead, he asked whether it would be agreeable to plant one tree to the north of the driveway and three trees to the south. He went on to say that this property, which he recently purchased, had been used for rental purposes for about 16 years; and that the back yard, as well as the side yard along Shenandoah, was completely overgrown with vegetation. He told the Board that he was not opposed to putting in some trees since it was his intention all along to do so.

Chairman Stout asked whether the staff had any concerns or questions regarding the applicant's request. Mr. Marx requested that the site plan be shown on the overhead to get a better understanding of where the easement in question is located on the property. Mr. Perry pointed

out the location of the easement and overhead electric lines in relation to where the proposed trees were to be planted. Following a brief discussion, Mr. Marx said the staff was fine with having one tree to the north and two to the south of the garage, rather than forcing three trees to the south.

For clarification, Mr. Hume asked if it was redundant to require more trees than are already required by the plat, since the plat requires a specific number of street trees. Mr. Sallee responded that the only difference really is where the trees are planted. He said this restriction would require the trees to be on the house side of the sidewalk, where a street tree usually is located in the utility strip. The revised condition (#4) was shown on the overhead.

In response to the Chairman, Mr. Perry indicated being in agreement with all the conditions shown.

Referring to the staff's recommendation, Ms. Meyer asked whether Mr. Perry was agreeable to the variance from 30 feet to 18 feet along Shenandoah Drive, rather than to 16'3" as he originally requested. Mr. Perry responded in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously to approve **V-2011-48: LEX PROPERTIES** (a variance to reduce the required side yard along Shenandoah Drive from 30 feet to 18 feet, for construction of an attached garage in a Single-Family Residential [R-1C] zone on property located at 1015 Della Drive) for the reasons recommended by the staff and subject to the four conditions, including the amendment of Condition #4, as follows: "A minimum of three small to medium-sized trees shall be planted along Shenandoah Drive, one to the north of the garage and two to the south of the garage, in accordance with a landscaping plan submitted to, and approved by, the Division of Building Inspection."

- b. **V-2011-50: KENNY and REGINA HOLBROOK** - appeal for a variance to reduce the required yard along Jacks Creek Pike from 300 feet to 221 feet, in order to construct a detached garage in the Agricultural-Rural (A-R) zone, on property located at 4300 Ravens Crest Lane. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage will be situated in the immediate vicinity of other structures on the lot, and will be over 220' away from Jacks Creek Pike.
2. The rectangular shape of this corner lot, and the drainage and topographic relief toward the rear of the lot, are special circumstances that contribute to justifying the need for the requested variance.
3. Strict application of the 300' setback requirement would force the appellants to place the detached garage at an undesirable location either in front of the existing residence or far more distant from an existing access drive.
4. The appellants are new owners of the property and are making a reasonable effort to locate a property improvement at a desirable location, with no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The detached garage shall be constructed in accordance with the submitted application and site plan.
2. No equipment used in a commercial business may be stored in the building necessitating this variance.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Jason Banks, Banks Engineering, was present on the appellants' behalf.

He said they were in agreement with the staff's recommendation, as well as the conditions for approval.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously to approve **V-2011-50: KENNY and REGINA HOLBROOK** (a variance to reduce the required yard along Jacks Creek Pike from 300 feet to 221 feet in order to construct a detached garage in the Agricultural-Rural [A-R] zone on property located at 4300 Ravens Crest Lane) as recommended by the staff and subject to the conditions recommended by the staff.

- c. **C-2011-44: FIRST ALLIANCE CHURCH** - appeals for a conditional use permit to expand the church parking lot with a grass reinforcement material in an Agricultural Urban (A-U) zone, on property located at 2201 Old Higbee Mill Road. (Council District 9)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that the area is monitored closely and corrective measures are implemented should the grass reinforcement material not work as well as anticipated. The site chosen for overflow parking is well back from Old Higbee Mill Road, and will be landscaped as required by Article 18 of the Zoning Ordinance.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The 58-space overflow parking area shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to installation of the grass reinforcement material.
3. The design of the overflow parking area, including the manner in which it is connected to the existing paved parking lot, shall be subject to review and approval by the Division of Traffic Engineering.
4. Landscaping for a vehicular use area shall be provided per Article 18 of the Zoning Ordinance.
5. If erosion or other problems are documented by the Division of Building Inspection and/or the Division of Engineering at this site, corrective measures shall be undertaken by the appellant. This may require that the mesh be removed and the site restored to a grassed condition, or that the area be paved with conventional materials. Should the appellant choose to pursue a paving option, additional authorization from the Board shall not be required, provided that design and landscaping requirements are satisfied per Articles 16 and 18 of the Zoning Ordinance. Any paving shall be permitted by the Division of Building Inspection, with storm water management measures implemented in accordance with the adopted Engineering Manuals.
6. This conditional use shall be subject to a review by the Board, one year after installation of these 58 parking spaces.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Art Davis, business manager for the church, was present. He indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover, and carried unanimously to approve **C-2011-44: FIRST ALLIANCE CHURCH** (a conditional use permit to expand the church parking lot with a grass reinforcement material in an Agricultural-Urban [A-U] zone on property located at 2201 Old Higbee Mill Road) with the conditions as set forth by the staff.

- d. **C-2011-45: JOHN STRICKLING** - appeals for a conditional use permit to establish an indoor recreational facility ("airsoft" training/games) in a Light Industrial (I-1) zone, on property located at 2156 Young Drive. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Airsoft training and recreational activities will be limited to the interior of the building, which will be soundproofed as determined to be necessary and feasible by the Division of Building Inspection. Adequate off-street parking will be provided, and adverse impacts from traffic are not anticipated.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Airsoft training and recreational activities shall be provided in accordance with the submitted application and site plan, limited to Tuesday through Sunday from 10:00 AM to 10:00 PM.
2. The facility shall be operated at all times in full compliance with applicable Federal, State and Local regulations.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facility.
4. Striping of the paved areas and marking of traffic circulation shall be done in accordance with the requirements of the Division of Traffic Engineering, which shall include the addition of some striped parking spaces in the paved area at the northwest corner of the property if feasible.
5. A minimum of one off-street parking space for every two participants shall be provided, plus one space for each employee.
6. The building shall be soundproofed as determined to be necessary and feasible by the Division of Building Inspection.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. John Strickling, appellant, was present. He indicated being in general agreement with the conditions for approval, with the exception of the limited days of operation. Mr. Strickling asked to be allowed to operate seven days a week, instead of Tuesday through Sunday, to allow the police department(s) to be able to use this facility.

In response to the Chairman, Mr. Marx said the operation of the use, from Tuesday through Sunday, was what the applicant originally proposed; however, he said the staff did not object to the requested change. Therefore, he suggested deleting the reference to Tuesday through Sunday in Condition #1. Mr. Strickling concurred.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously to approve **C-2011-45: JOHN STRICKLING** (a conditional use permit to establish an indoor recreational facility ["airsoft" training/games] in a Light Industrial [I-1] zone on property located at 2156 Young Drive) based on the staff's recommendation and subject to the six conditions, including the amendment of Condition #1, as follows: "Airsoft training and recreational activities shall be provided in accordance with the submitted application and site plan, limited to 10:00 AM to 10:00 PM."

- e. **C-2011-46: PETSMART** - appeals for a conditional use permit to expand the adoption center portion of an existing pet store in a Planned Shopping Center (B-6P) zone, on property located at 1945 Pavilion Way. (Council District 6)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The additional area to be used for pet adoptions will be entirely within an existing building that has been used as a pet store for many years. Outside pens will not be provided, and area residents will have convenient access to small animal adoption services that might not otherwise be available through local shelters and charities.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The adoption center shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including those needed for occupancy and renovations, shall be obtained from the Division of Building Inspection.
3. The building shall be soundproofed to the satisfaction of the Division of Building Inspection.
4. Outside pens or kennels shall not be provided.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Michelle Merrick, store manager, was present representing the appellant. She indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously to approve **C-2011-46: PETSMART** (a conditional use permit to expand the adoption center portion of an existing pet store in a Planned Shopping Center [B-6P] zone on property located at 1945 Pavilion Way) as recommended by the staff and subject to the four conditions.

- f. **C-2011-47: PLEASANT RIDGE BAPTIST CHURCH** - appeals for a conditional use permit to expand the church parking lot in a Single-Family Residential (R-1B) zone, on property located at 616 Wilderness Road. (Council District 6)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The parking lot extension will be to the rear of the subject lot, where there is a wide tree buffer, and the adjoining lot to the east is owned by the church. Since the church sanctuary seating is not increasing, it is anticipated that the additional parking spaces provided will help to minimize parking on Wilderness Road, which should be beneficial for the neighborhood.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The parking lot shall be constructed in accordance with an amended site plan indicating no additional access drives to Wilderness Road will be constructed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Pastor Earl Thomas was present on behalf of the church. He indicated that he had reviewed the conditions for approval and agreed to abide by them.

Action – A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously to approve **C-2011-47: PLEASANT RIDGE BAPTIST CHURCH** (a conditional use permit to expand the church parking lot in a Single-Family Residential [R-1B] zone on property located at 616 Wilderness Road) as recommended by the staff and subject to the five conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the

Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2011-49: DORIS DAUGHERTY** - appeals for a variance to reduce the required front yard from 30 feet to 11 feet in order to retain a carport in a Single-Family Residential (R-1D) zone, on property located at 408 Kilpatrick Court. (Council District 2)

The Staff Recommends: Disapproval, for the following reasons:

- a. The already constructed carport is a highly visible projection into the required front yard, and is out of character with the manner in which this well established neighborhood has been developed. It was built without a building permit, and according to the Division of Building Inspection, it does not comply with building code requirements.
- b. Special circumstances pertaining to this particular lot have not been identified that might justify a greater than 50% reduction in the required front yard.
- c. Other alternatives are available that would allow construction of a carport without the need for a front yard variance.
- d. The need for a variance was created to a large extent by the appellant's contractor proceeding with construction without going through the customary permitting process.

Representation – Ms. Doris Daugherty, appellant, was present and spoke about the situation involving the carport in question. She said she hired a contractor to build the carport after seeing the work that was being done on the house next door; and that she was informed by him that a building permit was unnecessary, as long as the structure was not attached to the house. Ms. Daugherty told the Board that she paid the contractor \$2,000 to build the carport; however, a relative pointed out to her that the construction had not been done properly and a permit would be needed to put a roof on the carport. When an application was made to Building Inspection, she said that is when she found out about the improper construction. She went on to say that, in order to improve the appearance of the structure, the four supporting poles were bricked. Ms. Daugherty stated that she is 73 years old; and due to health issues, she needed to have the carport, because she was unable to shovel snow during the winter months. A photo of the carport was shown on the overhead at the Chairman's request.

Mr. Hume told the Board that Ms. Daugherty had come to Building Inspection with "hat-in-hand" and was the victim of a less than honest contractor. He said this is an all too familiar story, and efforts are being made to find the contractor in question. He noted that this was not the applicant's fault. He also said that an inspector had been to the site to assess the situation; and they had come up with some ideas to make the carport structurally sound and safe for use.

Chairman Stout asked how best to handle this case, considering the staff's recommendation for disapproval, and that this was not the applicant's fault. He concurred with Mr. Hume that this is not an isolated incident and that unscrupulous people are taking total advantage of senior citizens. He asked what the Board could recommend without having to disapprove the variance or having the applicant withdraw. In response, Ms. Boland said the problem was that the staff recommendations did not find a

basis for the variance, and the carport was totally out of character with the neighborhood. She said she was not sure what the Board was looking for, in terms of a recommendation.

Referring to the staff's recommendation, Mr. Glover asked about reason "c", which noted other alternatives being available that would allow construction of a carport without the need for a front yard variance. Mr. Marx responded that the only alternative the staff could identify was to move the carport to the left of its current position, into the side yard, which probably would not be to the applicant's liking because the large tree(s) located there would have to be removed. He pointed out that even if the variance was approved, the structure would have to be substantially altered and the roof totally rebuilt. He said to the staff's thinking, if the structure had to be totally rebuilt, then it should be placed in a more suitable location.

Chairman Stout inquired whether the carport could be moved toward the left corner of the house, without disturbing the tree(s), and still allow the applicant to be able to get in and out. Mr. Marx responded, with respect to the suggested option, that a lesser variance would be needed for the projection of the carport into the side yard; and it would allow more convenient access to the front door. Chairman Stout felt that this alternative would be more convenient for the applicant, rather than forcing her to come outside in bad weather to get to the carport, which was her main concern. He also noted trying to avoid the additional expense to the applicant for tree removal. He went on to relate his concern about the carport, not only from the standpoint of aesthetics, but the applicant's safety as well. Chairman Stout said, as is, he would be unable to support the variance to retain the carport. However, he was hopeful that the Planning and Building Inspection staff would be able to work with Ms. Daugherty to help her correct the problem.

Mr. Hume asked whether the Chairman was more concerned about the structure's location or the structure itself. Chairman Stout replied that it was the structure. Mr. Hume said he felt that the Building Inspection office could help Ms. Daugherty with those issues, noting the huge financial impact on her. He thought they could correct the structural items that also were of concern so that it would be palatable to both the applicant and Building Inspection.

Mr. Griggs commented that he was in total agreement with Mr. Marx, in that the structure is unsafe and the location is inappropriate. Since the roof was going to have to come off anyway and the columns didn't have much value, he felt they should "start from scratch" and consider a more suitable location for the carport. On the other hand, he said if the Board decides to allow the carport to remain at the front of the house, even though it would be a bad precedent, maybe a condition could be imposed where the structure would be torn down if the applicant sells or transfers the house. He went on to say that there would have to be a good reason, such as a hardship, to leave the structure in front of the house and deny it to other people on the street who want to do the same thing.

Mr. Marx said the staff did not object to a postponement if the Board wanted them all to get together to see what they could come up with.

Ms. Boland pointed out that if the Board were to disapprove this variance request, it would not prevent Ms. Daugherty from coming back and asking for another variance in a lesser amount. She explained that this would be the case if something was worked out, as discussed earlier, to tuck the carport in at the side of the house so that it wouldn't project as far out as it currently does. She said, instead of the requested variance from 30 feet to 11 feet, the applicant would be asking for 30 feet to 20 feet, for example; and if the Board felt that was sufficiently different, she would not be prohibited from coming back earlier than the usual delay period, because it would be a substantially different variance.

Ms. Meyer asked if the applicant would have to re-apply, including the application fee. Ms. Boland responded that was correct.

Mr. Glover inquired whether a postponement would accomplish the same thing. Ms. Boland said she thought the applicant could postpone and amend the plan to decrease the amount of the requested variance.

For clarification, Chairman Stout explained to Ms. Daugherty that, as it is, the Board would have to disapprove the requested variance; but if there is a postponement, it would give her an opportunity to work something out with the Planning and Building Inspection staff in order to address the issues of

concern regarding the carport. Ms. Daugherty responded that she had sufficient funds to have the roof put on correctly, but she couldn't afford to have the trees taken out and to start all over. Chairman Stout said the Board and staff understood the situation, which was why they were trying to find a reasonable way to help her. Ms. Daugherty was reluctant to remove the large trees in order to locate the carport at the side of the house.

Mr. Glover said the Board would not want to force Ms. Daugherty to take out any trees to accommodate the carport. Referring to the site plan, he noted that the side yard is only 17 feet wide; and that he wasn't sure if placing the carport there was a feasible alternative. He said they were discussing how to make the existing structure comply with something that the Board could approve; but in order to do that, the applicant would have to go back and talk to the staff about it. He said this was more than the Board could take care of at the hearing today. Therefore, he suggested a postponement, if the applicant was agreeable to it.

Out of concern, Ms. Meyer recommended that Ms. Daugherty contact Mr. Sallee or Mr. Hume for assistance. Mr. Hume said he had spoken with Ms. Daugherty and would remain in contact with her to get further information about the contractor she hired. He noted that Mr. Dillon had been to the site and met with her also.

Chairman Stout asked if the staff had a problem with the case being postponed. Mr. Sallee responded that they did not. He suggested a two-month postponement to allow enough time to look at the available options.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously to continue **V-2011-49: DORIS DAUGHERTY** (a variance to reduce the required front yard from 30 feet to 11 feet in order to retain a carport in a Single-Family Residential [R-1D] zone on property located at 408 Kilpatrick Court) for two months.

D. **Conditional Use Appeals**

1. **C-2011-43: PUNCESTOWN STABLE, LLC** - appeals for a conditional use permit to allow seasonal horse shows at an equine riding and training facility in the Agricultural-Rural (A-R) zone, on properties located at 1210 Bel Mar Lane and 7510 Bates Creek Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as horse shows will only take place on two weekends per year. The potential for noise and traffic disturbances will be very limited in scope, and will be minimized through use of two alternative access routes to the horse show facility.
- b. All necessary public facilities and services are available and adequate for the proposed use, with restroom facilities and sewage treatment to be provided as directed by the Fayette County Health Department, and garbage pick-up to be handled privately.

This recommendation of approval is made subject to the following conditions:

1. Horse shows shall be conducted in accordance with the submitted application and site plan, limited to two weekends per year and conducted only in the outdoor riding arena.
2. An occupancy permit shall be obtained from the Division of Building Inspection within two months following action by the Board.
3. Horse shows shall be conducted without the use of outdoor lighting, loud speakers, retail sales, or food service.
4. Restroom facilities and sewage treatment shall be handled in accordance with the requirements of the Fayette County Health Department.

Chairman Stout had asked that the neighbor and the appellants discuss the issues of contention and noted that they apparently were unable to come to an understanding.

Citizen Comment - Mr. Bill Dowden, an adjacent property owner, was present to speak to this request. He said he did not have an opportunity to read the staff's recommendation or the attached conditions; however, he did support the appellants' endeavors with respect to the horse riding and training facility on the property. He noted the importance of adhering to the recommendations by staff, given the

history of proceeding with events/activities without prior approval. Mr. Dowden told the Board that he purchased 80 acres of a 240-acre farm in 1984; and that he has observed the deterioration of the land in the last 7+ years. He said he had implemented water control to re-establish 48 acres of farm land due to erosion caused mainly by water runoff, the severity of which has significantly increased in the last four years. In point, he talked about the erosion of the roadway and entrance to his property, which was attributed, in part, to the water runoff from the Reillys' property. As a result, he said the State had repaired the damage on two occasions. He described the condition of the paddocks on the backside of the appellants' farm, which included exposed rock, tall weeds and plank fences in need of repair. He acknowledged that efforts to discuss this with the Reillys were difficult.

Mr. Dowden then directed his comments to the building for horse training (indoor arena) that was approved previously, and his initial objection to the request and the site plan because it did not include a topographical map to address the water runoff issue. However, he said the large building, which was well done, does not impact the water runoff from his facility. He said he wanted the appellants to succeed, but he also wanted them to be good neighbors. He felt it was important not to have outdoor lighting for the horse shows due to concern about light pollution. It was noted that horse-related events have been held already at the riding/training facility. Mr. Dowden spoke about three incidents that occurred 100 yards from the location of other structures on the property: fire that burned the original stable to the ground; a barn that burned to the ground due to a lightning strike; and another substantial structure that was flattened due to sheer winds. He felt it was important for the facility to be in compliance to ensure the safety of the people that came there to use it. In closing, he reiterated about adherence to the recommendations by staff.

Mr. Griggs asked if Mr. Dowden had given some thought to an added condition to ensure that the appellants would adhere to better farming practices, thereby limiting the damage to his property. Mr. Dowden said, in all fairness, that the Reillys had a different operation than a farming operation, in that it was a commercial enterprise related to horses; and that they have land that is utilized for very specific training purposes. He said he didn't know of anything he could suggest for the land that is down to bare rock, as far as how to recover it, because he didn't have the ability to do that. He reiterated that a standard rain shower now results in increased runoff, whereas it had to be a deluge to create that before, which he said is an absolute fact. He said the significant erosion that results is due to the topography and the way the land is being used.

Mr. Griggs then asked about the outdoor lighting issue. Mr. Dowden noted that the outdoor lighting used for horse-related events on another farm two miles away was overpowering. However, he felt that the proposed condition to prohibit the use of outdoor lighting during the limited horse show events would address that issue of concern.

Representation – Mr. Sean Reilly and Ms. Sarah Reilly were present. Regarding the previous comments that were made, Mr. Reilly said he agreed that the two paddock areas adjacent to Mr. Dowden's property were neglected. He spoke about having come to the Board previously with a request for an indoor riding facility and the effort that was made to address the concerns of the neighbors represented by Mr. Lloyd at that time; however, the suggestions he offered to resolve those issues were turned down. Ms. Reilly added that Mr. Dowden had complained about everything they had done on their property since that time. Continuing, Mr. Reilly said they have worked with staff and installed a silt fence to address the water that was flowing from one paddock to another. However, he said the problem that Mr. Dowden spoke about involving water runoff and the erosion of the roadway at the entrance of his property was not being caused by them, but a neighboring property instead.

Chairman Stout said that Mr. Dowden indicated that he was in agreement with the conditions; and that the Board was concerned that the appellants clearly understood the proposed conditions. He asked if they were willing to abide completely by the conditions for approval. Mr. Reilly replied yes, with the exception of not being able to use loud speakers. He explained that what they use is a hand-held device with only one speaker to announce the classes; and that there is no loud commentary. He said they had been having these horse shows twice a year for seven years, and no one had ever complained about the noise. He said they would like nothing better than to be a good neighbor.

The Chairman recognized Mr. Hume who told the Board that, throughout this whole process, the appellants had been very cooperative with Building Inspection in what they've been asked to do; and they were very forthcoming with any questions that Building Inspection may have had. He said he didn't

feel there would be any compliance issues in the future because the appellants had been so cooperative.

Chairman Stout related his feeling that this is a neighbor situation more than it is a compliance issue.

Mr. Glover asked how the appellants' need to have a hand-held loud speaker could be accommodated, given the condition that restricts its use.

Ms. Boland responded that this condition was discussed in the staff meeting earlier that morning; and in their discussions, they interpreted this restriction, which is in the Ordinance, to mean that you cannot have a permanent wired loud speaker system which, in essence, is intended to project throughout an entire large area. She said what Mr. Reilly spoke about is a portable, temporary system (which she has experienced at horse events) that is not loud and blaring like the built-in systems, which would not be restricted by this condition. She said as long as it remains a small, portable system with one speaker to allow it to be heard on the property, it would not be in contradiction with the condition in question. A brief discussion followed regarding an appropriately worded revision of this condition.

For clarification, Ms. Meyer asked if Mr. Reilly said they had been having the horse shows for seven years. Mr. Reilly replied yes, and that they didn't know they needed to get a permit. He added that there had been no complaints regarding these events.

Mr. Griggs noted that there were several letters of strong support received for this request, as well as a few in opposition.

Citizen Comments - Mr. John Hahn, the owner of an adjoining property, was present to speak to this request. He said only one neighbor was present to complain about runoff; but other neighbors in that area experience similar problems with water, which he has observed. He said he was unable to hear the PA system during events, although they live only about 200 feet away; and, in his opinion, noise was a non-issue. He felt the Reillys should be allowed to continue having the seasonal horse shows at the riding and training facility on the property.

Ms. Joyce Hahn was present and concurred with her husband's comments. She also said, with respect to the use of the loud speaker, that it was barely noticeable to her when the horse shows are going on. She said she and her husband support the Reillys in teaching riding and training horses on their 30-acre farm. She said the horse show that was held in the spring had almost no traffic on Bel Mar Lane because the people who participated entered from Bates Creek Road; and that there has never been a (traffic) problem associated with these events. She reiterated her support of the horse shows at Punchestown Stable and welcomed these events as an example of the good work done by the Reillys in training both horses and riders. She said the Reillys work hard to make their farm successful, and they deserve the support of the neighborhood.

Mr. Dowden said he as well as the neighbors present were supportive of the Reillys' horse training/riding venture. However, he wanted to make it clear that the runoff was coming from their farm -- not the neighboring farm owned by Mr. Pasha. He said that water doesn't run uphill; and that he took pictures that showed a significant amount of water coming down Crawley Lane. This has caused significant erosion and has become problematic. He spoke about the ill will that has developed resulting in his objection to the things the appellants want to do. He said, from an engineering perspective, there is a real issue with water; and that he has put \$70,000 to \$80,000 into controlling water runoff from his farm.

Chairman Stout noted the neighbors' support, as well as the staff's recommendation for approval. He said from some of the comments that were made, there evidently is an ongoing issue involving the neighbors that he felt needed to be worked out. He recommended that they contact the Division of Engineering staff to find out how to correct the problem together -- and to include all the neighbors affected by the water runoff.

Mr. Saylor commented on the situation. He said he had met with Mr. Reilly when they first started building the covered indoor riding area; and that it was based on a complaint that there was an erosion problem being created by the grading work -- which wasn't the case. However, what they did notice was that the runoff was coming from the paddocks that direct toward Crawley Lane. He said, since this is an agricultural use in the Rural Service Area, they were limited in what they could do, as far as

enforcement, for example, if there was an erosion control problem. He said he would be more than happy to meet with the neighbors on site to try to determine what needs to happen.

Mr. Griggs said if the paddocks were devoid of any cover crop and there was no root system to hold the soil, they should be taken out of service so some vegetation is allowed to mature on them. He felt that a bad land steward lets the top soil disappear.

In response, Mr. Reilly said they are not dirt paddocks and did have grass on them. Mr. Griggs related that if the topsoil is being lost, the land is being overused. Mr. Reilly felt they were being painted as something they're not; and that they were good at what they do.

Chairman Stout reiterated his suggestion to the neighbors of seeking the expertise of the Division of Engineering to find out what the issues are. He curtailed the discussion about the water runoff issue.

Since there were no further questions or comments regarding the issue at hand, the Chairman called for a motion.

Action – A motion was made by Mr. Glover, seconded by Mr. Stumbo, and carried unanimously to approve **C-2011-43: PUNCHESTOWN STABLE, LLC** (a conditional use permit to allow seasonal horse shows at an equine riding and training facility in the Agricultural-Rural [A-R] zone on properties located at 1210 Bel Mar Lane and 7510 Tates Creek Road) as recommended by the staff, with the four conditions listed as amended on the screen.

E. **Administrative Review**

None

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There were none.
- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There were none.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be August 26, 2011.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:11 p.m.

Louis Stout, Chairman

James Griggs, Secretary